

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DIETGOAL INNOVATIONS LLC	§	
	§	
V.	§	No. 2:12cv562
	§	
WEGMANS FOOD MARKETS, INC.	§	

DIETGOAL INNOVATIONS LLC	§	
	§	
V.	§	No. 2:12cv568
	§	
EL POLLO LOCO, INC.,	§	

ORDER

The above-referenced causes of action were referred to the undersigned United States Magistrate Judge for pre-trial purposes in accordance with 28 U.S.C. § 636. The following motions are before the Court: Defendant Wegmans Food Market, Inc.’s Opposed Motion to Dismiss for Lack of Personal Jurisdiction and Alternative Motion to Sever and Transfer (Docket Entry #s 3, 4 in Cause No. 2:12cv562) and El Pollo Loco’s Motion to Dismiss for Improper Venue or Transfer to the Central District of California (Docket Entry # 3 in Cause No. 2:12cv568).

Wegmans and El Pollo Loco have moved to dismiss for lack of personal jurisdiction and alternatively to transfer venue. In response to both motions, DietGoal Innovations LLC (“Plaintiff”) alternatively requests leave to take expedited discovery regarding the amount of sales conducted on these defendants’ websites to Texas residents; the number of Texas residents who have accessed the websites; and additional contacts with the State of Texas such as purchase of products, advertisements, property, plans of expansion, contracts, employee residents, and offices. (Docket Entry # 5 at pg. 3 in Cause No. 2:12cv562) (Docket Entry # 4 at pg. 14 in Cause No. 2:12cv568).

EXHIBIT "C"

Lack of discovery in response to a dispositive motion when no discovery requests have been served is not a response the Court ordinarily considers.¹ In this instance though, the Court will allow Plaintiff additional time in which to seek limited jurisdictional discovery from these defendants. Accordingly, it is hereby

ORDERED that within ten days from the date of entry of this Order, Plaintiff may serve ten interrogatories on Defendants Wegmans and El Pollo Loco seeking information regarding, among other things, the amount of sales conducted on these defendants' websites to Texas residents; the number of Texas residents who have accessed the websites; and additional contacts with the State of Texas such as purchase of products, advertisements, property, plans of expansion, contracts, employee residents, and offices. Defendants shall answer the interrogatories within twenty days. It is further

ORDERED that within ten days from its date of receipt of Defendants' responses, Plaintiff may supplement its surreplies to Defendants' motions to dismiss. Within ten days, Defendants may file a brief in response to any supplement filed by Plaintiff.

SIGNED this 25th day of September, 2012.


CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE

¹ The Court puts the parties on notice that it expects a party who complains of lack of discovery in response to a motion to have been diligent in seeking the discovery it complains it is lacking. See *TQP Development, LLC v. CHS, Inc.*, Cause No. 2:11cv397 (Docket Entry # 220 at pgs. 2-3).